Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Leonard Shyrl Brown, Petitioner

vs.

STATE OF UTAH, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO

THE UTAH SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Leonard Shyrl Brown
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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Question presented for review

1. Is the Information clear, particular and sufficient to give Petitioner notice of the nature and cause of the accusation, allow Petitioner to prepare a defense, uphold due process of law, prevent unreasonable search and seizure and sustain conviction?

2. Did the prosecution and the Utah courts suppress evidence or otherwise frustrate the discovery process by refusing to comply with discovery and/or order discovery?

3. Was the jury instructed as to substantive law, facts and elements of a crime and that it must find Petitioner guilty beyond a reasonable doubt of each fact and each element of the supposed crime?

Parties

The caption contains all parties.

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Jurisdiction

The Information was filed in the Utah District Court on January 25, 1995. The Amended Information was filed on April 24, 1995. The Utah District Court judgment is dated May 2, 1996. The Utah Court of Appeals order affirming the District Court conviction was filed June 29, 2000. The Utah Court of Appeals denied rehearing on August 3, 2000. The Utah Supreme Court denied Petition for Writ of Certiorari on October 12, 2000. The Utah Supreme Court denied rehearing on November 1, 2000. This Court has jurisdiction under 28 USCA Section 1257(3).

Constitutional provisions

United States Constitution, Amendment 4. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment 5. "No person shall be held to answer for a capital or otherwise infamous crime, unless on the presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, on in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment 6. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense."

Statutes and rules

Statutes and rules are set out verbatim in the body of the Petition at the pages in which they are cited. 26 USCA Sections 63(b), 6017. UCA 59-1-401, 59-1-401(7)(b), 59-10-501(1) and (3), 59-10-542, 76-1-501(1) and (3). Utah Rules of Criminal Procedure 4, 6(a), 16.

Prayer

Petitioner respectfully prays that the Petition for Writ of Certiorari be granted.

Statement of the case

On January 25, 1995, the Information was filed in the Sixth District Court, Sevier County, Utah for five counts of "failure to file tax return" for the years 1988 to 1992. An Amended Information was filed on April 24, 1995 in the same court for five counts of "failure to file state income tax return" for the years 1988 to 1992. Both Informations accused "contrary to Sections 59-1-401(7)(b)" of the Utah Code. This section is a penalty statute. The Amended Information alleges contrary to UCA 59-10-502 "An income tax return with respect to the tax imposed by this chapter shall be filed by: (1)every

resident individual, estate or trust required to file a federal income tax return for the taxable year;...", a new accusation. Jury trial resulted in a guilty verdict on all five counts. The judgement. The sentence is not more than five years in the Utah State Prison on each count to be served consecutively. A fine, including surcharge of $9,250.00 is imposed. The surcharge states, according to UCA 59-14c -1, that Petitioner was tried and convicted of violation of Title 59, Chapter 13 Motor and Special Fuel Tax and/or Chapter 14 Cigarette and Tobacco Tax and Licensing. The conviction was affirmed by the Utah Court of Appeals, Memorandum Decision, not for official publication, filed on 29 Jun 2000. Rehearing denied by order on August 3, 2000. The Utah Supreme Court denied Petition for Writ of Certiorari on October 12, 2000 and rehearing on November 1, 2000.

Petitioner is compelled to proceed without assistance of counsel and did not waive assistance of counsel at any time in the Utah courts.

V

1. **Insufficient Information.** The Information is insufficient in several areas, each are addressed below.

Penalty statute. Without substantive law, Petitioner is accused under a penalty statute, UCA 59-1-401(7)(b)[1]. The normal procedure is to accuse under substantive law, try and convict before applying a penalty statute. Petitioner does not know if he is accused of evading "any tax" or "any requirement" of Title 59 UCA, which has twenty one (21) chapters and numerous sections, or "any lawful requirement of the commission." See Information, App. E. It is impossible to prepare a defense to a penalty statute accusation.

Jurisdiction. The Information fails to plead and prove, with a preponderance of evidence, the jurisdiction and venue of the Utah district court as required by UCA 76-1-501(3).[2]

Facts. The Information states no facts or insufficient facts to establish the jurisdiction of the court, or that Petitioner evaded any particular tax or any particular requirement of Title 59 or any lawful particular requirement of the commission. The facts are not sufficient to determine that Petitioner committed a "Third Degree Felony" as concluded in the Information.

> "No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon

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1 "Any person who, with intent to evade any tax or requirement of this title or any lawful requirement of the commission, fails to make, render, sign, or verify any return or to supply any information within the time required under this title, or who makes, renders, signs or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony, except that, notwithstanding Section 76-3-301, the fine is not less than $1,000 or more than $5,000.

2 "The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence."

their consciences, to say that the evidence before them...is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged." In re Winship, 25 L Ed 2d, 371, 374

Elements of a crime. The Information fails to state the elements of the supposed crime. Substantive law should cited and all elements of the supposed crime should be alleged in the Information and presented to the jury to be determined beyond a reasonable doubt according to UCA 76-1-501(1)[3]. Neither this Petitioner, the Utah courts, nor the jury have known all of the elements of the supposed crime. One example of an element not alleged nor proven beyond a reasonable doubt is liability which is addressed below.

> "The Fifth Amendment to the United States Constitution guarantees that no one will be deprived of liberty without 'due process of law'; and the Sixth, that '[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury.' We have held that these provisions require criminal convictions to rest on a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." U.S. v Gaudin, 115 S. Ct. 2310, 2313.

This is in harmony with the Utah Supreme Court, Johns v Scholsen, 717 P2d 1336, 1338, which requirement is ignored by the Utah courts.

Prima facie case. Utah law requires a certificate of the

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[3] "A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In the absence of proof, the defendant shall be acquitted."

(tax) commission to establish a prima facie case[4] according to UCA 59-10-542. While not admitting that the insufficient Information refers to Chapter 10 taxes, this requirement is applicable if Chapter 10 taxes are found to be the objective of Information. The certificate of the commission is not in evidence and therefore not issued by the commission negating any claim that Respondent may raise concerning failure to file, failure to pay or failure to supply information. This protection from over zealous commission employees required by the Legislature is denied this Petitioner.

Liability. If Chapter 10 tax is the intent of the Information, UCA 59-10-501[5] states that only those "liable for any tax" are required to file. Liability must be an element of the supposed crime. No Utah court or jury has found Petitioner liable for any tax beyond a reasonable doubt. The Information does not allege any statutory liability for any tax. The Utah district court judgment may claim a liability when it imposed the surcharge upon Petitioner included with a fine.

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[4] "The certificate of the commission to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required by or under the provisions of this chapter, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such infomation has not been supplied."

[5] "(1) Every person liable for any tax imposed by this chapter, or for the collections thereof, shall keep such records, render such statements, make such returns and comply with such rules as the commission may from time to time by rule prescribe."

Utah law does provide for a surcharge in UCA 59-14c-1[6]. UCA Chapter 13 is the Motor and Special Fuel Tax Act. UCA Chapter 14 is Cigarette and Tobacco Tax and Licensing. Neither Chapter 13 nor Chapter 14 of the Utah Code are alleged in the Information. Petitioner was prosecuted under either Chapter 13 or 14 or both as shown by the surcharge of 4% of an unknown amount. Petitioner believes he is not involved in either Chapter 13 or 14 taxes from 1988 to 1992 the years alleged in the Information. Respondent claims for the first time on Certiorari before the Utah Supreme Court that the alleged $1,395.95 and $2,000 compelled Petitioner to file a federal income tax return and a Utah tax return. However, if Chapter 1 taxes are in dispute, Petitioner would not be liable for any taxes because 26 USCA Section 63(b)[7] provides a standard deduction of $5,000 plus $8,000 (three dependents) for a total deduction of $13,000. This is far more than the $2,000 claimed by Respondent, proving Petitioner is not liable for any 26 USCA, Chapter 1 tax and, therefore, not liable for any UCA 59, Chapter 10 tax and not required to file any tax returns.

Probable cause. The Information is filed without probable cause. Utah Rules of Criminal Procedure 4[8] requires,

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"(1) There is levied on every taxpayer an educational funding tax of 4% on the amount of tax payable or paid under Title 59, Chapters 13 and 14A, for taxable years which begin during 1986."

7

"In the case of an individual who does not elect to itemize his deductions for the taxable year, for purposes of this subtitle, the term 'taxable income' means adjusted gross income, minus--(1) the standard deduction and (2) the deduction for personal exemptions provided in section 151."

8

"(a) Unless otherwise provided, all offenses shall be prosecuted by indictment or information sworn to by a person having reason to believe

in the instant action prosecuted by information, a sworn statement by a person having personal knowledge that a crime has been committed. That required sworn statement is not on the record of the Utah courts. The rule is supported by the Utah Supreme Court.

> "The steps required to properly initiate prosecution of a felony by information are...(4) subscribing and swearing to the information by the complaining witness;..." State ex rel. Cannon v Leary, 646 P2d 727 (Utah 1982)

The rule appears to be known and settled throughout this nation.[9] The instant Information appears insufficient without (1) a sworn complaint, (2) a credible person, (3) elements of an offense and (4) verification by one who has actual knowledge of the facts[10]. The instant Information is filed over the signature of the prosecutor, without a sworn statement of a person who has actual knowledge of the facts, and only on "information and belief" of the prosecutor. See footnote 10 below. The Information is not supported by probable cause and the flawed arrest warrant according to Utah Rules of

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the offense has been committed."

9

"An information need only to be based upon a sworn complaint by some credible person other than the prosecutor. The constituent elements of the offense must appear in both the complaint and the information...The sufficiency of affidavits to support an information is to be judged on their face." 42 CJS Indictments and Informations Section 49a.

10

"The verification must be positive and by one who has actual knowledge of the facts, and an affidavit on information and belief is not sufficient." 42 CJS Indictments and Informations Section 49b.

Criminal Procedure 6(a)[11], relying upon probable cause absent in the Information, is without probable cause violating the 4th Amendment of the United States Constitution[12] and Article I, Section 14 of the Utah Constitution which mirrors the U. S. Constitution, 4th Amendment.

Amended Information. The Amended Information (Appendix F) is unlawful and suffers from the same insufficiencies as the Information lacking facts, elements of a crime, allegation of liability, probable cause under oath, particularity and certainty. Neither the Information or Amended Information informs Petitioner of the nature and cause of the accusation. Amending the Information under Utah Rules of Criminal Procedure 6(a)[13] requires permission of the court. Respondent did not request permission to amend the Information. The Amended Information did raise an additional

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"Upon the filing of an information, if it appears from the information, or from any affidavit filed with the information, that there is probable cause to believe that an offense has been committed and that the accused has committed it, the magistrate shall cause to issue either a warrant for the arrest or a summons for the appearance of the accused."

12

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

13

""The court may permit an indictment or information to be amended at any time before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced."

or different offense when it cited UCA 59-10-502.[14] While not stated in the Amended Information, Respondent claimed that the federal statute that required Petitioner to file a Utah return is 26 USCA Section 6017.[15] 6017 chapter 2 tax is Old-Age, Survivors and Disability Insurance found in USCA Sections 1401 to 1403 related to taxes in Virgin Islands, Guam, American Samoa and Puerto Rico as stated in 26 USCA Section 1403(b)(2).[16] Old-Age, Survivors and Disability Insurance is not a tax found in Utah Code Title 59 nor in Title 59, Chapter 10 as alleged in the Amended Information. Old-Age, Survivors and Disability Insurance is not a tax collected by Utah. Respondent failed to allege Sections 6017 or 1401-3 in the Amended Information, failed to allege the jurisdiction or venue of the Utah district court and failed to allege facts or circumstances whereby Petitioner could be prosecuted in a Utah court for violation of Section 6017. Wherefore, substantial rights of Petitioner are prejudiced by the unlawful amending of the Information without permission, without hearing, and lack of due process of law.

> According to the Georgetown Law Journal, Apr 1997, "US v Marcello, 876 F2d 1147, 1152, (5th Cir 1989), impermissible amendment of the indictment when trial

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14

"An income tax return with respect to the tax imposed by this chapter shall be filed by: (1) every resident individual, estate or trust required to file a federal income tax return for the taxable year;"

15

"Every individual (other than a nonresident alien individual) having net earnings from self-employment of $400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by chapter 2."

16

"For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa and Puerto Rico, see section 7651.

court redrafted indictment and subsequent conviction based on new facts and theories," and "US v Aguilar, 756 F2d 1418, 1423 (9th Cir 1985), substantive amendment of indictment, 'particularly if the Government broadens or alters the offense charged,' is impermissible."

Infamous crime - Indictment. According to the Georgetown Law Journal, Apr 1997, the U. S. Supreme Court decided,

> "No person shall be held to answer for a capital or other infamous crime, unless upon a presentment or indictment of a grand jury. Exparte Bain, 121 US 12-13 (1987). Infamous crime is defined as, "...punishment by imprisonment in [a] penitentiary." Macklin v US, 117 US 348, 354 (1986).

Petitioner was imprisoned in two penitentiaries, the Draper Utah prison and the Gunnison Utah prison. Petitioner was compelled to answer to an information and not to an indictment of a grand jury.

Failure to file is not a crime. The vague insufficient Information, without facts, without substantive law, without elements of a crime, accusing without particularity "intent to evade any tax or requirement of Title 59 of the Utah Code", fails to make out a crime. If there is a tax due under any tax or requirement of Title 59 (no tax due is alleged or proven beyond a reasonable doubt), the penalty according to UCA 59-1-401[17], is $50 or 10% of the tax. The jury was not given the option of this lesser penalty. The Utah Tax Commission (State exhibit 6) sent an unsigned letter to Petitioner a person is required to file "who meets the filing requirements as stated on the attached

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"(1) The penalty for failure to file a tax due return within the time prescribed by law including extensions is the greater of $50 or 10% of the tax due on the return."

schedule." There was no schedule attached. State's exhibit 7 shows that Petitioner wrote the Utah Tax Commission seeking more information and the lawful foundation. Petitioner did not receive the requested information and does not now know the nature and cause of the accusation.

Insufficient arrest warrant. The Bench Warrant issued May 16, 1995, Record p. 41, states, "The above named defendant having been charged with the offense of failure to file/pay tax return committed on January 01, 1988..." Assuming while not admitting a six (6) year statute of limitations, the Warrant issued not within the statute of limitations. The Information was filed in January 25, 1995. The insufficient Information cannot be the basis for a legal arrest[18]. The Affidavit for Search Warrant, Record p. 47, does not state that a crime has been committed nor that Petitioner committed the supposed crime[19].

2. **Discovery/Bill of Particulars.** Utah Rules of Criminal Procedure 16[20] requires the prosecution to provide

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"A warrant legally and duly issued authorizes the proper officer to make an arrest, but an invalid warrant, as where there is an insufficient complaint or information to support the issuance of a warrant, may not be the basis for a legal arrest." 6A CJS Arrest, Section 7

19

"Probable cause in contest of arrest warrants depends on presence of two criteria: (1) the warrant and supporting documents must justify a finding of probable cause to believe that offense has been committed and (2) the warrant and documents supporting it must demonstrate a sufficient basis for a finding of probable cause that the party named in the warrant committed the offense charged." 6A CJS Arrest, Section 7, note 75

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(a) Except as otherwise provided the prosecutor shall disclose to the defense upon request the following material or information of which he has knowledge: (1) relevant written or recorded statements of the

discovery and continue to provide discovery. Petitioner is confused as to the nature and cause of the accusation, the particular tax in question, the particular crime accused, and the administrative foundation of the accusation. Petitioner believes there is substantial information in the administrative record negating guilt or mitigating guilt. One such evidence is States exhibit 7. The administrative record contains other evidences in connection with State's exhibit 7, which the prosecutor fails to provide and the Utah court refuses to order discovery. Petitioner demanded a bill of particulars (Record p. 82). The bill of particulars is denied. Petitioner demanded discovery of the administrative record (Record p. 129). Discovery is denied. Petitioner demanded to know the statute making Petitioner liable for any unpaid tax (Record p. 128). Respondent refused to state the statute making Petitioner liable for any tax. All requests for discovery and/or bill of particulars are denied by the Utah courts to this date.

> "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violated due process where the evidence is material either to guilt or punishment, irrespective of good faith or bad faith of the prosecution." Brady v Maryland, 373 US 83, 87.
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> "All doubts about the discoverability of a particular matters should be resolved in favor of disclosure."

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defendant or codefendants;... (4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and (5) any other item or evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense. (b) The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. The prosecutor has a continuing duty to make disclosure."

27 CJS Discovery Section 5

3. **Jury instructions.** Petitioner tests the jury instruction under manifest injustice[21]. All of Petitioner's requested jury instructions is denied. All of Respondent's jury instructions are given. The jury was not instructed on substantive law. The jury was not instructed that it must find Petitioner guilty beyond a reasonable doubt of each fact. The jury was not instructed that it must find Petitioner guilty beyond a reasonable doubt of each element of the supposed crime. See US v Gaudin, p. 2 supra.

> "Held: ...the prosecution must prove beyond a reasonable doubt every fact necessary to constitute the crime charged." Mullaney v Wilbur, 421 US at 684

4. Issues raised in lower courts.

Utah Supreme Court

1. Insufficient Information raised in Petition for Writ of Certiorari (hereafter, PWC) at page 3. Certiorari denied.
2. Penalty statute raised in PWC at page 4. Certiorari denied. Jurisdiction raised in PWC at p. 13. Certiorari denied.
3. Facts raised in PWC at p. 4. Certiorari denied.
4. Elements of a crime raised in PWC at p. 7. Certiorari denied.
5. Prima facie case raised in PWC at p. 12. Certiorari denied.
6. Liability raised in PWC at p. 10. Certiorari denied.
7. Probable cause raised in PWC at p. 11. Certiorari denied.
8. Amended information raised in PWC at p. 3. Certiorari denied.

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Utah Rules of Criminal Procedure 19(c), jury instructions. "No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury is instructed, stating distinctly the matter to which he objects and the ground of his objection. Notwithstanding a party's failure to object error may be assigned to instructions in order to avoid a manifest injustice."

9. Infamous crime raised in PWC at p. 16. Certiorari denied.
10. Insufficient arrest warrant raised in PWC at p. 14. Certiorari denied.
11. Discovery/Bill of Particulars raised in PWC at p. 16. Certiorari denied.
12. Jury instructions raised in PWC at p. 4. Certiorari denied.

Utah Court of Appeals

1. Insufficient information raised in Appeal Brief at p. 2-14 and reply brief at p. 1. Ruled amended information sufficient at p. 1 or to be without merit in Memorandum Decision (hereafter MD) at p. 2.
2. Penalty statute raised in reply brief at p. 1. Ruled to be without merit in MD at p. 2.
3. Jurisdiction raised in appeal brief at p. 2 and reply brief at p. 7. Ruled to be without merit in MD at p. 2.
4. Facts raised in appeal brief at p. 4 and reply brief at p. 3. Rules to be without merit in MD at p. 2.
5. Elements of a crime raised in appeal brief at p. 5 and reply brief at p. 5. Ruled to be without merit in MD at p. 2.
6. Prima facie case raised in appeal brief at p. 8 and reply brief at p. 5. Ruled to be without merit in MD at p. 2.
7. Liability raised in appeal brief at p. 11 and reply brief at p. 15. Ruled that 26 USCA Section 6017, on allegation of net earnings of $400 for a taxable year shall make a return with respect to the self employment tax at p. 2.
8. Probable cause raised in appeal brief at p. 7 and reply brief at p. 2. Ruled to by without merit in MD at p. 2.
9. Amended information raised in reply brief at p. 9. Ruled to be without merit in MD at p. 2.
10. Infamous crime raised in reply brief at p. 24. Ruled to be without merit in MD at p. 2.
11. Failure to file raised in appeal brief at p. 9. Ruled that 26 USCA Section 6017 required Petitioner to file in MD at p. 2.
12. Insufficient arrest warrant raised in appeal brief at p. 7 and

reply brief at p. 22. Ruled to be without merit in MD at p. 2.
13. Discovery/Bill of particulars raised in appeal brief at p. 5 and in reply brief at p. 17. Ruled to be without merit in MD at p. 2.
14. Jury instructions raised in reply brief at p. 18. Ruled "sufficient to sustain the jury's verdict, to which we 'afford great deference.'" in MD at p. 2.

Utah Sixth District Court

1. Penalty statute raised at Transcript (hereafter, Tr) March 5, 1996, p 16. Denied Record (hereafter R.) P. 33-5.
2. Jurisdiction raised at Tr March 5, 1996, p. 4 and Tr Aug 22, 1995, p. 7. Denied R. p 33-5.
3. Facts raised at Tr Aug 14, 1995, p. 6 and Tr Aug 22, 1995, p. 7. Denied R. p. 33-5.
4. Elements of a crime raised at Tr Mar 5, 1996, p.5. Denied.
5. Liability as an element of the crime raised at Tr March 5, 1996, p. 25-27. Denied R. p 33-35.
6. Probable cause raised at Tr Aug 14, 1995, p. 16-17 and Tr Aug 22, 1995, p. 12. Denied. Information filed on "information and belief" is insufficient raised at Tr Aug 14, 1995 and Tr Aug 22, 1995, p. 11, 12, 16. Denied R. p 33-5.
7. Substantive law raised at Tr Aug 14, 1995, p. 6, Tr Mar 5, 1996, p. 7, Tr Aug 22, 1995, p. 20, 24; Particular tax Tr Oct 17, 1995, p. 7; object to trial setting prior to a firm decision on 25 USCA Section 6017 at Tr Oct 17, 1995, p. 11. Denied.
8. Not required to file raised at Tr Mar 5, 1996, p. 24, 26-27. Denied R. p 33-5.
9. Insufficient information raised at Tr Aug 14, 1995, p. 4, and Tr Mar 5, 1996, p. 4, 10, and Tr Aug 22, 1995, p. 6, and the case deals with Title 59 Utah Tax Code at Tr Aug 22, 1995, p. 31, 32. Denied R. p. 33-5.
10. Nature and cause of the accusation raised at Tr 6 Nov 1995, p. 3, and Tr Aug 29, 1995, p. 7, and Tr Aug 22, 1995, p. 18. Denied R. p. 33-5.

11. Insufficient arrest warrant raised at Tr Aug 22, 1995, p. 13. Denied R. p. 33-5.

12. Discovery raised at Tr Nov 6, 1995, p. 4, and Tr Mar 5, 1996, p. 4, and administrative record Tr Mar 5, 1996, p. 11-15, 28, and discovery allowed only on evidence the State intends to present and not on evidence to negate guilt and understand the nature and cause of the accusation Tr Oct 17, 1995, p. 5, and bill of particulars Tr Mar 5, 1996, p. 4, and Tr Aug 22, 1995, p. 14, 15. Denied.

Reasons to grant the writ.

The court should grant the Writ of Certiorari.

A. The Utah courts have departed so far from the accepted and usual course of judicial proceedings and/or sanctioned such departure as to call for an exercise of this court's supervisory power. The elements of criminal prosecution are established. Departure from the established principles calls for dismissal. An information must be plain, particular, with sufficient facts, with sufficient elements to make our a crime, and supported by a sworn statement sufficient to make out probable cause. In the instant action Petitioner believes the Information is insufficient to give notice of the nature and cause of the accusation and provide due process of law. Petitioner believes that the insufficient information and insufficient jury instructions excused Respondent from is burden of proof beyond and reasonable doubt. Petitioner believes that the insufficient information without facts and elements of a crime demonstrates discrimination or bias by the court and creates bias by the jury against Petitioner. There appears no precedent for prosecution of a tax which is not collected by Respondent and over which the Utah courts would not have jurisdiction. Lack of probable cause is ground for dismissal. Respondent's refusal to provide discovery appears unprecedented. This court should supervise the Utah courts, which courts should obey the usual, common,

ordinary constitutional requirements, laws, precedents and rules which it appears it has failed to do. If Respondent is allowed to avoid its duty and responsibility in this criminal prosecution, the situation will degenerate until Respondent is required by this court to follow the laws and rules. The Utah courts appears biased against this case and Petitioner for failing or refusing to adhere to the usual ordinary course of due process of law. The courts appear to affirm this is intolerable in a free society based on law.

1. Prosecution of Petitioner under a penalty statute is unprecedented as far as Petitioner can determine.

2. The Information which accuses "intent to evade any tax requirement of Title 59 of the Utah Code" appears vague or insufficient. The accusation is similar to accusing a person of violating "any section or requirement of Title 76 (the criminal code) of the Utah Code." Petitioner believes such an accusation would not be allowed in this or the Utah courts and should not be allowed in the instant action.

3. Without substantive law, the Information appears insufficient.

4. Without facts or with insufficient facts and without allegation of all elements of the supposed crime, the Information appears insufficient.

5. Failure to allege all elements of the crime and and instruct the jury that it must find guilt beyond a reasonable doubt as to each fact and element, excuses or compromises the State's burden of proof.

6. The law (UCA 59-10-501(1)) states that liability is an element of a tax crime which requires proof beyond a reasonable doubt. Having failed to prove any tax liability, Petitioner is innocent.

7. Petitioner suffers under prosecution for violation of 26 USCA Section 6017, which is not alleged in the Information, is not found in Utah Code Title 59, is a tax not

collected by Utah, and over which the Utah courts do not have jurisdiction according to the record.

8. Without a sworn statement filed with the Information by someone with personal knowledge of a crime and that Petitioner committed the supposed crime, it appears that Respondent failed to establish probable cause for filing the Information or probable cause for issuing the arrest warrant.

9. Without a Grand Jury Indictment prosecution under this Information for a felony wherein Petitioner is committed to two Utah Prisons, is unlawful.

10. The prosecution's refusal to cooperate in and the Utah court's refusal to order discovery, produce the administrative record, produce all evidence tending to negate guilt, prove innocence or mitigate guilt or punishment is departure from usual accepted judicial procedure and appears unprecedented.

11. The judgment states, in imposing a surcharge, that Petitioner is accused of evasion of a tobacco tax and/or a motor fuel tax. This is an accusation not in the Information, not addressed at trial, and not decided by the jury.

12. The Information is not sufficient to inform Petitioner of the nature and cause of the accusation, to prepare a defense, and to avoid double jeopardy. The Information is a mass of confusion, lacking particularity and clarity, with unlawful changes or new accusations during the procedure, denying Petitioner notice and due process of law.

B. The state courts apparently decided important federal questions in a way that conflicts with relevant decisions of this Court or the U. S. Court of Appeals on important federal questions of being informed of the nature and cause of the accusation and due process of law.

1. Failing to require Respondent to state sufficient facts in the Information, the Utah courts decided the courts, the prosecution, and the jury need not allege and find

every fact necessary to constitute a crime and need not prove every fact beyond a reasonable doubt, conflicting with In re Winship, 25 LEd 2d 371, 374.

2. Petitioner is prosecuted by information and imprisoned twice without the presentment of a Grand Jury, conflicting with Ex parte Bain, 121 US 12-13 (1987) and Macklin v US, 117 US 348, 354 (1986).

3. The Utah courts allowed amendment of the Information without permission of the court, without a hearing, and with new accusations, conflicting with US v Marcello, 876 F2d 1147, 1152 (5th Cir 1989) and US v Aguilar, 756 F2d 1418, 1423 (9th Cir 1985).

4. Failing to require Respondent to state every fact and element of the supposed crime, the Utah courts decided the jury need not determine that Petitioner is guilty beyond a reasonable doubt of every element of the crime, conflicting with US v Gaudin, 115 SCt 2310, 2313 and Mullaney v Wilbur, 421 US at 648.

5. Respondent's refusing discovery of evidence favorable to Petitioner and the Utah court's refusing to order discovery, the Utah courts decided the important federal questions conflicting with Brady v Maryland, 363 US 83, 87

6. The closest law library available is 110 miles distance at Brigham Young University limiting research. As a substitute for Supreme Court cases, Petitioner relies upon Corpus Juris Secundum to establish the usual, ordinary and accepted judicial procedure in some points. The CJS citations are found with the points above.

C. The public and Petitioner should know the requirements of an information.

The Petition for writ of Certiorari should be granted.

DATED: Nov 16, 2000 Leonard Shyrl Brown

Leonard Shyrl Brown

Filed Jun 29 2000. In the Utah Court of Appeals. State of Utah, Plaintiff and Appellee, v. Leonard Shyrl Brown Defendant and Appellant. Memorandum Decision (Not for Official Publication). Case No. 961535-CA. Filed (June 29, 2000). 2000 UT App 207.

Sixth District, Richfield Department. The Honorable David L. Mower

Attorneys: Leonard Shyrl Brown, Richfield, Appellant Pro Se. Jan Graham and Laura B. Dupaix, Salt Lake City for Appellee.

Before Judges Bench, Billings and Davis.

Per Curiam:

Leonard Shyrl Brown appeals his conviction of five counts of failure to file a tax return, a third degree felony. We affirm.

The Amended Information satisfied the requirements of Rule 4(b) of the Utah Rules of Criminal Procedure. It described the offense by its statutory name, included citations to the statutes, quoted the elements, and stated the year involved in each count. This information satisfied the rule and was sufficient to enable Brown to prepare a defense. His repeated assertions that the information did not allege a public offense and the court lacked jurisdiction are without merit.

Brown's claim that the statute of limitations barred prosecution for the failure to file a return for the year 1988 is without merit. Utah Code Ann. Section 59-1-401(9)(b) (1996) (formerly section 59-1-401(7)(b)) applies a six year statute of limitations that commences to run when any tax would be due to be remitted. This, the statute began to run on April 15, 1989. The Information was filed on January 25, 1995, within the six year statute of limitations.

Utah Code Ann. Section 59-10-502(1) (1996) requires a Utah income tax return to be filed by "every resident individual, estate or trust required to file a federal income tax return for the taxable year." Every person who

has "net earnings from self-employment of $400 or more for the taxable year shall make a return with respect to the self-employment." 26 U.S.C.A. Section 6017 (1989). Taxable income includes all income from whatever source, including gross income derived from a business and compensation for services, such as fees, commissions, and fringe benefits. See id. Sections 61(2) and (3), 63 (1988).

The State's evidence was sufficient to sustain the jury's verdict, to which we "afford great deference." State v. Jiron, 882 P.2d 685, 691 (Utah Ct. App. 1994). "Where there is any evidence, including reasonable inferences that can be drawn from it, from which findings of all the elements of the crime can be made beyond a reasonable doubt, our inquiry is complete and we will sustain the verdict." Id. (Citations omitted). "Reversal is warranted only when the evidence is so inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime." Id.

The evidence demonstrated that as a self-employed dentist, Brown received more than $400 from the State of Utah for treatment of Medicaid patients for each of the years in question. He was therefore required to file federal and state tax returns. Brown failed to file a state return despite being notified to do so by the Utah State Tax Commission. The final element of the offense requires proof of the intent to evade the requirement to file a return. "Because direct evidence of a taxpayer's intent is often nonexistent, specific intent must be drawn from the surrounding facts, considering reasonable inferences drawn therefrom." Jensen v State Tax Comm'n, 835 P.2d 965, 973 (Utah 1992); see also Nelson v. State Tax Comm'n, 903 P.2d 939, 940 (Utah 1995) ("Irrational and unsupported interpretations of the tax code will not justify circumvention of the requirement to file and pay state taxes, especially when the Commission has notified a resident of his or her duty to do so."). In this case, the jury could reasonably infer from the evidence that Brown intended to evade the filing requirement by his reliance upon his

illogical and unsupported interpretation of tax statutes, his denial that payments received for his services were income, and his failure to keep records to allow determination of his actual income.

We have reviewed the remaining issues raised by Brown and conclude they are without merit. See Jiron, 882 P.2d at 691; see also State v Carter, 776 P.2d 886, 888 (Utah 1989) (holding appellate court need not address every argument, issue, or claim raised on appeal).

We affirm the convictions.

/s/ Russell W. Bench, Judge. /s/ Judith M. Billings, Judge.
/s/ James Z. Davis, Judge.

Filed Utah Court of Appeals, Aug 03, 2000
In the Utah Court of Appeals
State of Utah, Plaintiff and Appellee, v. Leonard Shyrl Brown, Defendant and Appellant.
Order Case No. 961535-CA
Before Judges Bench, Billings, and Davis.

This matter is before the court on a petition for rehearing filled pursuant to Rule 35 of the Utah Rules of Appellate Procedure.

It is hereby ordered that the petition for rehearing is denied.

Dated this 3rd day of August, 2000.

For the court /s/Russell W. Bench

APPENDIX B

SEAL State of Utah, Sixth District Court, Richfield
State of Utah, County of Sevier. I certify that this document or record, is a full, true, and correct copy of the original, on file in this office. Date May 2, 1996. /s/ Cindy L. Scott, Deputy Court Clerk.
R. Don Brown #0464, Sevier County Attorney, Sevier County Courthouse, 250 North Main Street, Richfield, Utah 84701. Telephone: (801) 896-6812
In the District Court of the Six Judicial District in and for Sevier County, State of Utah.
State of Utah, Plaintiff, vs. Leonard Shyrl Brown DOB 8 4-28 Defendant.
Judgment, Case No 951600012FS, Judge David L. Mower

The above-captioned matter having come on for sentencing on the 2nd day of May, 1996, pursuant to a jury verdict of guilty of five offenses of Failure to File Income Tax Return, each a Third Degree Felony, and the Court having entertained the statement of R. Don Brown for the State of Utah, and the Defendant, the Defendant having waived his right to counsel, and being apprised of no further impediment to entry of Judgment;

Now therefore, regarding each of the five counts, the Defendant is sentenced to serve a term of not to exceed five years in the Utah State Prison and fined in the sum of $9,250, including the surcharge.

The prison sentences are ordered served consecutively.

The Defendant is given credit for four days served prior to sentencing.

Dated this 2 day of May, 1996.
/s/ David L. Mower, District Court Judge

APPENDIX C

In the Supreme Court of the State of Utah
State of Utah, Respondent, v. Leonard Shyrl Brown, Petitioner. No. 20000771-SC, 960535-CA, 960906418
Order.

This matter is before the court upon a Petition for Writ of Certiorari, filed pursuant to Rule 48, of the Utah Rules of Appellate Procedure.

It is hereby ordered that the Petition for Writ of Certiorari filed on August 28, 2000, by petitioner is denied.
For the court:
October 17, 2000 /s/ Richard C. Howe, Chief Justice

APPENDIX D

Petition for rehearing denied November 1, 2000 by letter signed by Pat H. Bartholomew relying upon order by the Utah Supreme Court.

In the Supreme Court of the State of Utah

Order

The Court hereby issues the following instructions to the clerk of the Court. Petitions for Rehearing will be accepted pursuant to Rule 35 of the Utah Rules of Appellate Procedure in cases which have received plenary review by the Court and a full opinion has been published, either as a signed opinion or per curiam.

The substance of Rule 35 provides concise instructions for rehearings and further provides that untimely or consecutive petitions will not be received by the clerk.

The clerk is further instructed to refuse to accept petitions for rehearing, motions for reconsideration, or any instrument similarly captioned in the categories of actions next named: interlocutory appeals which have been denied (Rule 5), motions for summary disposition which have been granted or denied (Rule 10), and petitions for writ of certiorari which have been denied (Rule 49).

Dated this 23rd day of June, 1999.

For the Court. /s/ Richard C. Howe, Chief Justice

APPENDIX E

Filed 95 Jan '95 Clerk CLS
R. Don Brown #0464. Sevier County Attorney. Sevier County Courthouse, 250 North Main Street, Richfield, Utah Telephone: (801)896-6812
In the District Court of the Sixth Judicial District in and for Sevier County, State of Utah
State of Utah, Plaintiff, vs. Leonard Shyrl Brown, DOB: Defendant. Information, Case No 951600012FS. Judge David L. Mower

The undersigned, R. Don Brown, Sevier County Attorney, states on information and belief that the Defendant committed the crimes of:

Count 1: Failure to file tax return, contrary to Section 59-1-401(7)(b), in that said Defendant, with intent to evade any tax or requirement of Title 59 of the Utah Code, did fail to make, render, sign or verify a tax return for the year of 1988, all of which constitutes a Third Degree Felony carrying a fine of not less than $1,000.00 or more than $5,000.00.

Count 2: *Exactly as count 1 except the year* 1989.

Count 3: *Exactly as count 1 except the year* 1990.

Count 4: *Exactly as count 1 except the year* 1991.

Count 5: *Exactly as count 1 except the year* 1992.

This information is based on evidence obtained from the following witnesses: Mericia Milligan.
Authorized for presentment and filing on the 20th day of January, 1995. /s/ R. Don Brown, Sevier County Attorney

APPENDIX F

Filed '95 Apr 24 Clerk CLS
R. Don Brown #0464. Sevier County Attorney. Sevier County Courthouse, 250 North Main Street, Richfield, Utah 84701 Telephone: (801) 896-6812
In the District Court of the Sixth Judicial District in and for Sevier County, State of Utah.
State of Utah, Plaintiff, vs. Leonard Shyrl Brown, DOB: Defendant.
Amended Information, Case No. 951600012FS
Judge David L. Mower

The undersigned, R. Don Brown, Sevier County Attorney, states on information and belief that the Defendant committed the crimes of:

Count 1: Failure to file state income tax return, contrary to Sections 59-1-401(7)(b) and 59-10-502, Utah Code Annotated, 1953, with intent to evade any tax or requirement of Title 59 of the Utah Code, did fail to make, render, sign or verify a Utah State income tax return for the year of 1988, all of which constitutes a Third Degree Felony carrying a fine of not less than $1,000.00 nor more than $5,000.00.

Count 2. *The same as count 1 except the year* 1989.

Count 3. *The same as count 1 except the year* 1990.

Count 4. *The same as count 1 except the year* 1991.

Count 5. *The same as count 1 except the year* 1992.

This information is based on evidence obtained from the following witnesses: Mericia Milligan.
Authorized for presentment and filing on the 24th day of April, 1995. /s/ R. Don Brown, Sevier County Attorney

APPENDIX G